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# FBI Law Enforcement Bulletin



## Surreptitious Surveillance Cameras



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# FBI Law Enforcement Bulletin

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# ***Police Training for the Whole Person***

*An Exploration of the Spiritual Dimension*

By JONATHAN A. SMITH, Ph.D.



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**W**ith ever-higher expectations, a rapidly expanding global arena, and an environment where change appears as the only constant, many organizations, including the police, are emphasizing the importance of their employees. Such phrases as "Our people are our most important asset"<sup>1</sup> and "Policing is a people business—of people, by people"<sup>2</sup> are common. But,

do these statements refer to people as whole beings?

Perhaps an odd question—after all, considering people as anything else seems absurd—but, actually, why do the police want whole people working for them? Why not just focus on the part useful to them—perhaps only cognitive or physical abilities, for example? What about police training? Can a person's empty mind be loaded with the

requisite information and sent on its way? What would be missing if the police concentrated solely on the portion of their officers that proved vital to getting the job done?

First of all, employees do not come like that. They cannot simply be sliced up and remain alive, enthusiastic, and engaged. People come to work as whole human beings, and an increasing body of evidence shows that



“

***People come to work as whole human beings, and...nurturing all of their aspects can result in significant benefits for their organizations.***

”

*Dr. Smith is a senior lecturer at the Ashcroft International Business School, Anglia Ruskin University, in Cambridge, England.*

nurturing *all* of their aspects can result in significant benefits for their organizations.<sup>3</sup>

A particularly arduous and varied job, policing, at times, draws on every element officers have in their personal armory and makeup. High levels of absence, long-term sickness, abuse of alcohol and other drugs, and high divorce and suicide rates for officers testify to the demanding nature of policing. These difficulties present clear evidence that the law enforcement profession cannot focus only on specific segments of officers, and, at the same time, they raise the question of whether every factor—mind, body, and spirit—are nurtured, trained, and supported to the extent necessary for officers to be fully fit for the role they must perform.

The author and a fellow researcher developed the Global Fitness Framework (GFF) to

identify all of the aspects that the law enforcement community needs to consider for officers to be fully fit.<sup>4</sup> The GFF looks at the physical, mental, and spiritual fitness of individuals, groups, and society. Although all of these elements and their interaction are important, the spiritual dimension undoubtedly represents the most difficult, contentious, and often-avoided aspect in this whole framework.

So, what is this spiritual dimension? Does it have any relevance to police training? In 2005, the author explored these questions as they related to the training of police trainers for the 43 Home Office forces in England and Wales.<sup>5</sup>

### **THE RESEARCH**

The majority of training in U.K. police forces is carried out by officers. At the time the author conducted his research, most agencies had a policy

wherein tenures into training often lasted for 3 years. This meant that the initial instruction of trainers had to quickly and effectively equip officers with the skills to deliver the required instruction. The principle method for training these officers, the Trainers' Development Program (TDP), became the focus of the author's research.

A 10-week, full-time residential program, the TDP consisted of a distance-learning component, a 6-week training course, and a 4-week assessment phase. Two directors of study (DSs) facilitated each course, which had 12 students attending. Although most DSs were officers, some, like the author, were civilians. The TDP course took a student-centered, humanistic psychological approach derived from the work of Maslow and Rogers.<sup>6</sup> It used Kolb's experiential learning and included a focus on diversity and attitudinal development.<sup>7</sup>

### **Data Collection**

The author investigated from a constructivist paradigm whether an exploration of the spiritual dimension should be included in the TDP's 6-week training course. His work had a phenomenological basis wherein he made the effort to understand respondents' perceptions and collect a wide variety of views to provide a rich and broad understanding. Because

of the nature of the research, generalizing the findings must be treated with caution, although the author contends that the variety and depth of perceptions gathered provide a database that allows others to make judgments about the possible transferability of findings to their own situations.<sup>8</sup>

The author collected data using semistructured interviews, a reflective journal, and a questionnaire. In total, over 100 respondents took part in the study, and the author's reflective journal covered over 1,000 hours of TDP experience.

### Term Definition

After an extensive literature review concerning the meaning of spirituality, the author chose a broad definition so that the exploration embraced as many aspects of a diverse society as possible. "Spirituality is a state or experience that can provide individuals with direction or meaning or provide feelings of understanding, support, inner wholeness, or connectedness. Connectedness can be to themselves, other people, nature, the universe, a god, or some other supernatural power. Spirituality in the workplace is about individuals and organizations seeing work as a spiritual path, as an opportunity to grow and to contribute to society in a meaningful way. It is about care, compassion, and support

of others; about integrity and people being true to themselves and others. It means individuals and organizations attempting to live their values more fully in the work they do."<sup>9</sup>

### Operational Experience

Prior to joining the TDP, officers typically worked in operational environments for anywhere from 5 to 25 years. The author's research revealed that these operational experiences impacted significantly on how officers approached the TDP.

***The research revealed a number of common strategies that officers used to cope with the toxic nature of their role.***

Although operational policing is a difficult, challenging, and sometimes threatening task, the author found that despite these pressures, the vast majority of officers are committed, loyal, and hardworking and perform their role professionally and effectively.<sup>10</sup> Of course, the influences, reactions, and ways of coping described here do not in any way represent all police officers or even the majority.

But, they are typical of those who took part in the research and are significant enough to have a major impact on officers and the way the police service operates.

The research showed that many had joined the police service because they wanted to do something meaningful and saw police work as an opportunity to make a positive contribution to their community and the wider society. When working on the streets as an operational officer, however, some experienced a sharp contrast between this desire and the realities of operational policing where they often were ostracized, taunted, and mentally or physically abused.

New recruits quickly experienced the strong police culture, particularly the negative aspects that many studies have highlighted.<sup>11</sup> Of course, talk of a police culture undoubtedly made this appear more monolithic than it actually was, but some common elements were frequently observed in the research. The negative aspects of the culture, often referred to as the canteen culture, included peer pressure, cynicism, and resistance to change. The author investigated the numerous reasons for this canteen culture and discovered that part of it could have resulted from peer pressure or because of the nature of operational policing. Interestingly, if the canteen culture is

related to the nature of policing, then the author argues that this could be a manifestation of the collective coping strategies used by officers to deal with the demanding and sometimes threatening nature of some operational police work.

The research revealed a number of common strategies that officers used to cope with the toxic nature of their role. Humor was one. Some officers said that they undertook a “performance” in their role.<sup>12</sup> These respondents felt that the public, police service, or officers themselves often expected the police to behave in ways that implicitly demanded this performance. Others reported that they mentally distanced themselves from their feelings and emotions. Often, they spoke of using their police uniform as a source of protection, like putting on a metaphorical suit of armor to shield themselves and their feelings from the demands of the role. Some officers went further and said that they had to adopt a whole thought process and demeanor of immortality; otherwise, they were unable to do the job they did. The author envisaged that if this suit of armor was worn every day for many years, then, perhaps, it began to be removed less and less at the end of the shift until it remained on permanently and the individual changed.

The concept of spirituality in the workplace is a strategic issue that encompasses a whole way of operation for an organization. The author asserts that the roots of policing always have been about working with people and communities and caring and supporting all members of those communities in the fight for a well-ordered, law-abiding society. Spirituality, its sense of community and its focus on people as whole

rewarding and fulfilling purpose; and they cannot make a valuable and worthwhile contribution to the community.

### Training Role

After 20 or 25 years working in the operational environment, an officer may decide to move into a training role. In training groups, Heron points out that organizational cultures can influence a negative form of group dynamic, which he calls cultural oppression. “Group behavior is restricted by oppressive norms, values, and beliefs that flow into it and permeate it from the surrounding culture.”<sup>13</sup>

The cultural oppression in this context relates to the canteen culture found in the operational police environment and shows why it is important to understand this pattern of behavior in the training arena. It can influence the viewpoint of officers undertaking training and is likely to impact significantly on the success of that training.

The author contends that for trainers to be effective in the police service, they must know themselves; have high levels of emotional intelligence; and show empathy, care, and compassion for their students. Some defense mechanisms are required in the training role, but these differ from those developed for operational policing.



people, clearly fits with what the police service primarily is there to do. The author suggests that many of the issues faced by operational officers are fundamentally of a spiritual nature, particularly where these officers feel that they cannot be whole people; they are not recognized and valued by the organization and wider community as whole people; their lives have no

If operational duties generate a number of anxieties and result in officers distancing themselves from their feelings and emotions, then a conflict exists between the way they have to work in an operational role and the requirements in a training one. This discord has to be managed if training in the police service is to be effective. The essential transition needed involves the process of officers escaping their operational-policing defenses, gaining a greater knowledge of themselves, reconnecting with their feelings and emotions, and then managing these effectively to facilitate training for others.

This research identified, however, that the TDP course dealt only superficially with issues of anxiety, defense mechanisms, and the required transition to a training environment. The author stresses that the needs and significance of this managed transition were not fully acknowledged in the TDP and may be one reason why consecutive HMIC (Her Majesty's Inspectorate of Constabulary) reports indicated that training did not effectively address the attitudinal development of officers.<sup>14</sup>

### **Spiritual Exploration**

Respondents gave a wide variety of answers to the question of whether the spiritual dimension should be explored

in the TDP. Many comments highlighted a required transition from the fact-based orientation of some operational policing to the less certain areas of attitudinal development found in the training environment.

The author investigated many aspects to the spiritual dimension and how these could assist the development of trainers for the police service. Some of the most fruitful areas came

***Spirituality, its sense of community and its focus on people as whole people, clearly fits with what the police service primarily is there to do.***

The author extensively investigated the work of Maslow and its relevance to police training, including self-actualization, peak experiences, and both cognition and values of being.<sup>16</sup>

### **THE FINDINGS**

The author identified many significant issues with respect to the relevance of an exploration of the spiritual dimension on the TDP. While it is beyond the scope of this article for him to describe these in detail, he summarizes some of the main benefits and difficulties associated with undertaking an exploration of the spiritual dimension.

#### **Possible Benefits**

Exploring the spiritual dimension could encourage students to operate more at the self-actualized level in Maslow's hierarchy and to increase their spiritual intelligence. Both represent the types of qualities sought in U.K. police trainers. Another benefit involves helping TDP students gain a greater awareness of themselves and increase their effectiveness in managing their feelings and emotions. This would enable them to facilitate more learning for their students, particularly in the areas of attitudinal development and diversity.

In addition, such an exploration could provide a greater understanding of the dynamics

from a psychological perspective of spirituality. Twigg, Wyld, and Brown identify the psychological perspective as one of three forms of spirituality and highlight that Maslow's work is a fundamental part to this.<sup>15</sup> It was appropriate to use Maslow here as his hierarchy formed an important and accepted part of the TDP course (although explorations on the TDP focused almost exclusively on the lower levels in Maslow's hierarchy).

present in a group and help in comprehending how these limit people's expressions of their sense of identity. Finally, it could demonstrate that police organizations value the whole person, which may result in more engaged and motivated trainers, and it may assist in reducing the negative aspects of police culture, thereby helping trainers understand some of the issues that impact this culture. This would provide a greater understanding of the issues and anxieties that the operational role can generate for officers and the possible results. This, in turn, may enable trainers to become more motivated and fulfilled.

### Potential Difficulties

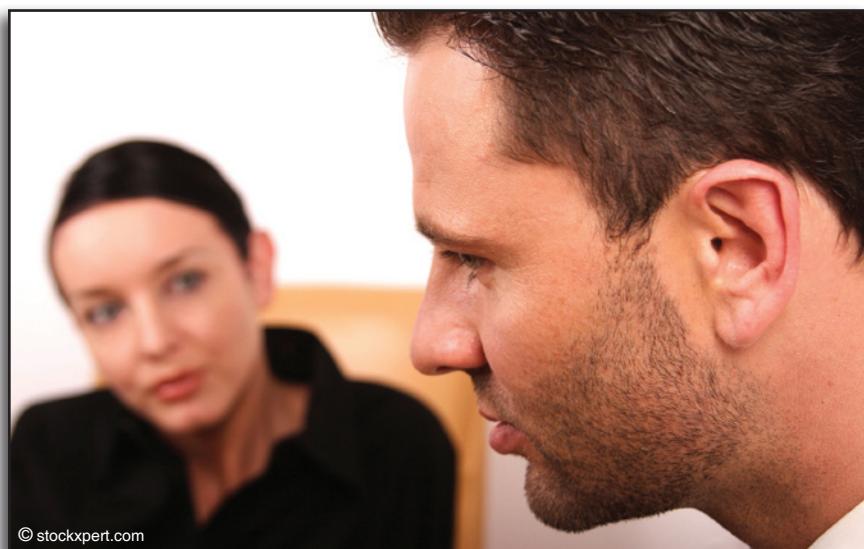
Because the concepts under consideration often are subtle, usually elusive and challenging,

and almost inevitably vague and tenuous, the potential exists that given the limited time available, explorations could simply confuse TDP students. Operational experiences, defense mechanisms, and coping strategies developed by students impact significantly on explorations of the spiritual dimension, and these would take time to work through, both in building a sufficiently safe environment for students to discuss issues that may be central to their sense of identity and in dealing with defenses and resistance. Additional spiritual support and counseling mechanisms outside the classroom could be required, possibly involving extra expense. Overall, given the workload required in a TDP course, the additional exploration of a spiritual dimension may be too much for some students.

From an administrative standpoint, exploring this area in a course that aims to develop training skills may pose some ethical considerations. After all, it would be problematic for DSs who do not recognize the spiritual dimension in their own lives to assist students in their explorations of spirituality. On the other hand, DSs who embrace spirituality still would need a sufficiently high skill level to facilitate this depth of exploration. Because all DSs would need to attain this level, all would require further instruction, which would increase the cost of training TDP students. Finally, explorations of this nature may not be supported and reinforced when students progress to training environments within police forces.

### RECOMMENDATIONS

The author's research indicates that operational policing impacts so significantly on students joining the TDP course that although he recommends that an exploration of the spiritual dimension be included, it must be preceded by an organizationwide, strategic-level commitment and initiative. This approach can provide a unified policy throughout the organization, which ensures that training is aligned with operational policing and offers a strategy to address the root cause of many of the difficulties that police



training can experience. This is not a process to be embarked on lightly. A substantial commitment from the organization is required as this is a major cultural change, which will be a difficult and lengthy process. However, it has the potential to significantly benefit the organization, its way of operation, and the level of service it provides.

The research suggests that some of the negative aspects of the operational police culture may stem from officers not being recognized and valued as whole people. Adopting a holistic approach to leadership and training, including explorations of the spiritual dimension, may assist in addressing some of these factors and help increase the effectiveness of the police organization because people will feel more motivated, fulfilled, and valued. It also may develop parts of the care aspect of the policing role and improve the level of service provided to the public. Further study must be undertaken in this area, however, as the author's research focused primarily on trainers' development in the United Kingdom.

Once a strategic-level initiative has commenced, the method of training trainers can be designed so that it supports and is in tune with the ethos and approach of the organization. An exploration of the spiritual dimension should use

an experiential approach that provides the space for students to focus on their own development and also examines the issues they will need to consider as a trainer in this area. The exploration should focus only on the initial stages in a person's spiritual development and include Maslow's theories of self-actualization, B-values, and peak experiences, as well as spiritual intelligence. These

***“A substantial commitment from the organization is required as this is a major cultural change, which will be a difficult and lengthy process.”***

opportunity for them to explore their own use of defense mechanisms. As such, operational defenses and the negative aspects of police culture can impact a new DS's approach that could affect the training delivered, particularly in relation to the attitudinal development of TDP students. Consequently, the author recommends a review of the induction process for DSs.

## CONCLUSION

The author's research focused on the relevance of an exploration of the spiritual dimension on the Trainers' Development Program in the United Kingdom. However, he found that spirituality has the potential to benefit the wider service, as well as the TDP. This research, therefore, has broader and more far-reaching implications and has the potential to impact significantly on the police service as a whole. ♦

topics fit the context of police training and raise many of the important issues in it. These first steps on the spiritual journey are likely to be as far as it is possible to go with TDP students because they are new to this training, which has the development of basic training skills as a priority.

The author's exploration of the DSs' role revealed that the induction course for new DSs may not provide sufficient

## Endnotes

<sup>1</sup> J. Simms, "Way Out West," *People Management*, March 11, 2004, 42.

<sup>2</sup> HMIC (Her Majesty's Inspectorate of Constabulary), *Diversity Matters* (London, UK: Home Office Communication, 2003), 13.

<sup>3</sup> R.A. Giacalone and C. Jurkiewicz, eds. *The Handbook of Workplace Spirituality and Organizational Performance* (New York, NY: M.E. Sharpe, Inc., 2003); and S. Howard and D. Welbourn, *The Spirit at Work Phenomenon* (London, UK: Azure, 2004).

<sup>4</sup> J.J. Rayment and J.A. Smith, "The Global Fitness Framework," *Practitioner*

*Paper Series*, Anglia Ruskin University, (Chelmsford, UK: Earlybrave, 2007).

<sup>5</sup> J.A. Smith, "Training for the Whole Person: An Exploration of Possibilities for Enhancing the Spiritual Dimension of Police Training," PhD diss., University of Hull, 2005. The author presented this research at the first annual Beyond Survival: Wellness Practices for Wounded Warriors conference hosted by the FBI Academy's Behavioral Science Unit. For additional information, see the May 2009 issue of the *FBI Law Enforcement Bulletin*.

<sup>6</sup> A.H. Maslow, "A Theory of Human Motivation," *Psychological Review* 50 (1943); and C. Rogers, *Freedom to Learn for the 80s* (Columbus, OH: Charles Merrill, 1983).

<sup>7</sup> D.A. Kolb, *Experiential Learning. Experience as the Source of Learning and*

*Development* (London, UK: Prentice Hall, 1984).

<sup>8</sup> A. Bryman, *Social Research Methods*, 3rd ed. (Oxford, UK: Oxford University Press, 2008), 378.

<sup>9</sup> J.A. Smith and J.J. Rayment, "Spirituality in the Workplace: Defining the Territory," *Practitioner Paper Series*, Anglia Ruskin University (Chelmsford, UK EarlyBrave, 2008).

<sup>10</sup> The author's findings are similar to those in HMIC, *Diversity Matters*, 51.

<sup>11</sup> S. Holdaway, "Discovering Structure: Studies of the British Police Occupational Culture," in *Police Research: Some Future Prospects*, ed. M. Weatheritt (Aldershot, UK: Gower, 1989).

<sup>12</sup> E. Goffman, *The Presentation of Self in Everyday Life* (Middlesex, UK: Penguin, 1987), 26.

<sup>13</sup> J. Heron, *The Facilitators' Handbook* (London, UK: Kogan Page, 1989), 29.

<sup>14</sup> HMIC, *Diversity Matters*, 59; and HMIC (Her Majesty's Inspectorate of Constabulary), "Training Matters" (2002), 44, retrieved on May 29, 2008, from <http://inspectorates.homeoffice.gov.uk/hmic/inspections/ptd/thematic/training-matters/>.

<sup>15</sup> N. Twigg, D. Wyld, and G. Brown, "Quest for Fire: A Redefinition and Reconceptualization of Spirituality at Work," *Insights to a Changing World Journal*, March 15, 2001, 2.

<sup>16</sup> A.H. Maslow, *Toward a Psychology of Being* (New York, NY: Van Nostrand Reinhold Company, 1968); *The Farther Reaches of Human Nature* (New York, NY: Penguin, 1993); and *Religions, Values, and Peak-Experiences* (Middlesex, UK: Arkana, 1994).

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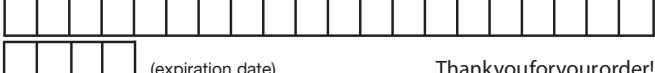
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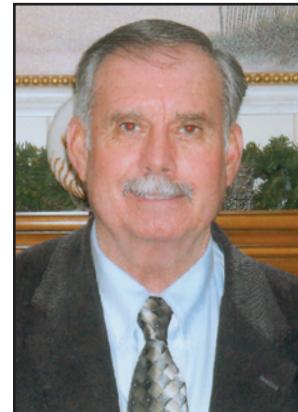
## Use of Force and Community Awareness

By Grant G. Boyer



Good evening ladies and gentleman. It is both an honor and a pleasure to discuss such a critical issue between the community and the police. I have been a lifelong student of policing in America. The focus of my remarks this evening will be directed to the improvement of the community-police relationship and, most important, how we can make this happen. Although I have spent many years in law enforcement as an educator, I will approach the topic from a community educational perspective. I believe that most citizens not only have limited insight, understanding, and appreciation of what police do, why they do it, and how they do it but their interpretation of what the police do is extremely distorted by both internal and external influences. I believe in empowering people by providing factual, realistic information to generate respect, cooperation, and support from the community.

*Mr. Boyer, an administration of justice professor and program coordinator at Long Beach City College, delivered this speech on February 25, 2009, to the Long Beach, California, Citizen's Police Complaint Commission.*



## Community-Police Relations

Positive community-police relations require community trust, faith, and confidence in the actions of the police. Sir Robert Peel said, “People are the police and the police are the people.... The ability of the police to perform their duties is dependent upon public approval of police existence, actions, and behavior and the ability of the police to secure and maintain public respect.” Acquiring public trust, faith, and confidence can be a complex process.

### A Clear Understanding

Most people do not possess a clear, accurate understanding of police training, education, and preparation prior to enforcing or gaining compliance to the law. I am continually asked such questions as, “Can the police do this? Can they do that? Why don’t they do this? Why didn’t they do that?” People have little or no understanding of police processes or, even worse, an inaccurate and extremely distorted personal perspective.

### Personal Perceptions

We are a product of our life’s experiences. As a result, we interpret and process what we see and hear differently. If each of you saw and heard an event from exactly the same location, and I separated and interviewed each of you afterward, your description of what you saw and heard would differ considerably. Not that you were intentionally trying to be deceptive but, without realizing it, your interpretation of the event would be influenced by personal prejudices, biases, eyesight, hearing, employment, education, and other life experiences. Additionally, our family and friends, movies, television shows, and the news media heavily influence us. Unfortunately, many of these internal and

external influences create an extremely distorted image of police actions, conduct, and behavior.

### Role of Policing

Historically, police have been portrayed as “crime fighters” or “crime busters” who, on a daily basis, go from crime to crime fighting and “hookin’ and bookin’” bad guys. Research suggests that 80 percent or more of activities that police officers perform is community service of a noncriminal-related nature. Twenty percent or less of their time actually involves arrests and booking offenders.

How important is this misunderstanding of the role of the police in the community relationship? It is very important for a community to realistically understand the role and function of its police department. Years ago, I created the Long Beach Citizen’s Police Academy to accurately inform, educate, and empower citizens as to the police process, hoping to create greater understanding, cooperation, and support from the community. Several other organizations also have conducted community outreach workshops related to improving police-community relations. However, we are not doing enough.

“  
...we need to increase  
our efforts to  
educate, inform,  
and empower citizens  
about their rights  
under the law....  
”

### Compliance Concerns

I have a personal philosophy: “Pay me now, or pay me later.” Now, maybe even more than ever, as a society, we need to increase our efforts to educate, inform, and empower citizens about their rights under the law and develop a clear understanding for their role and responsibility as citizens regarding compliance to the law. Gaining that compliance may prove the greatest challenge to every police officer. Obtaining voluntary compliance may be even more difficult. According to Dr. George Thompson, 7 out of every 10 people in

violation of the law will cease their action upon the physical presence or verbal command of an officer. However, that leaves three who do not. Dr. Thompson believes that through the skillful use of words, two of these more difficult people will eventually comply. That leaves one challenging, noncompliant citizen for the officer to deal with.

### An Officer's Toolbox

The California Penal Code, Sections 832 through 843, and the use-of-force paradigm contain the lawful use of force for police officers involved in gaining compliance to the law. The use-of-force paradigm, incorporated in certified law enforcement academy training, is taught throughout California.

I will focus on option three of the use-of-force paradigm, the empty-hand control. It is virtually impossible for citizens who observe an officer applying academy-trained defensive and weaponless tactics with a noncompliant citizen not to see what they perceive as a physically abusive officer applying what they believe to be brutally excessive force. Unfortunately, the citizen's perception of the event, although misperceived, is that person's reality. The image created in the mind of the citizen without a clear understanding and appreciation of the certified academy training that the officer receives and uses with the noncompliant offender severely damages the community-police relationship.

### Public Knowledge and Information

Neither the justice system nor any law enforcement agency condones unwarranted, unjustifiable, and illegal excessive force. However, due to limited public knowledge and information, the majority of citizens do not realize that the



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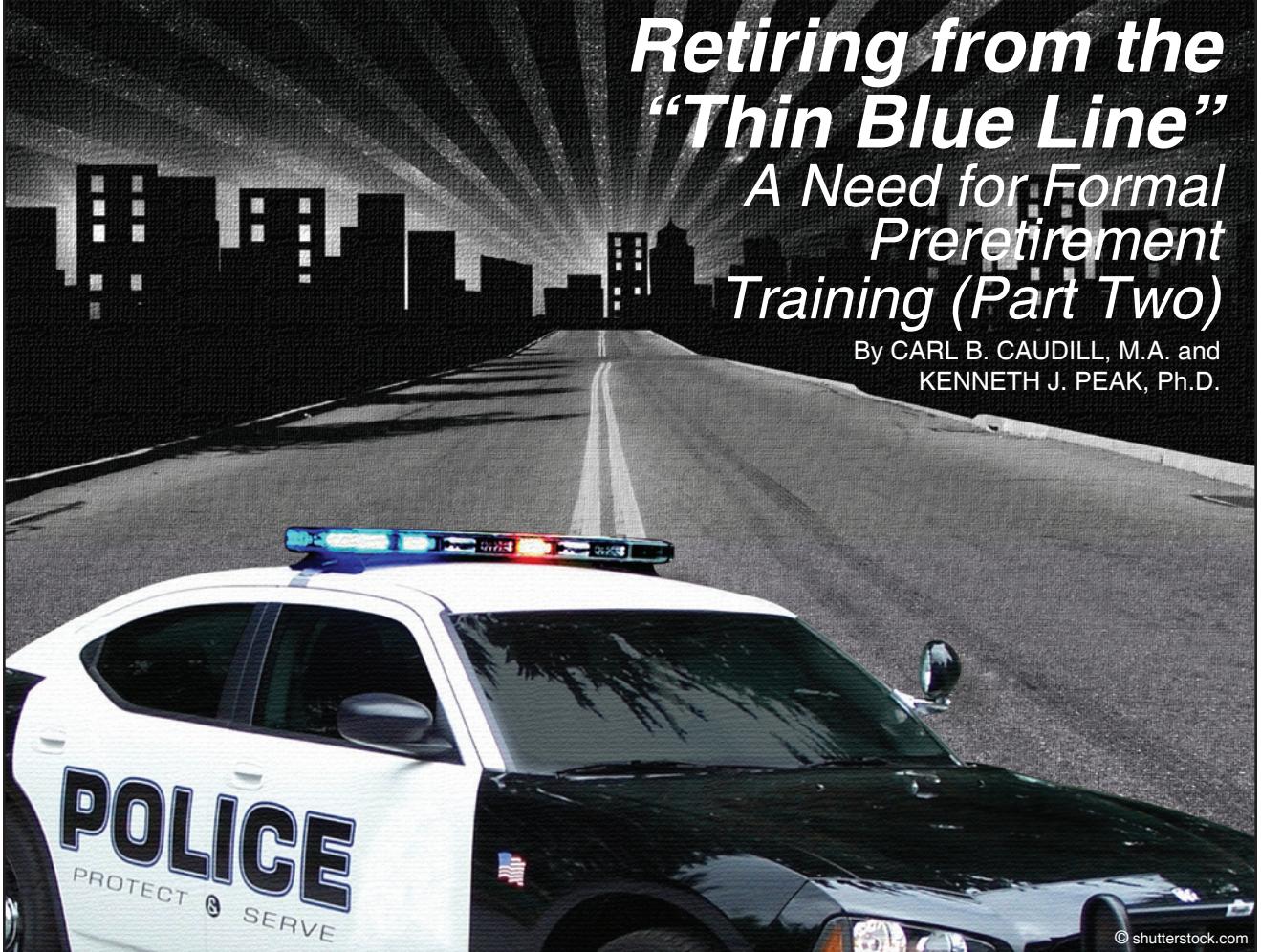
authority to use force in gaining compliance to the law is both basic to the role of maintaining social order and deeply imbedded in the U.S. Constitution and the California State Constitution.

Sir Robert Peel also stated, "The degree of co-operation of the public that can be secured diminishes proportionately with the necessity for the use of force in achieving police objectives." However, exercising the use of force must be done with the greatest care and discretion and will ultimately be evaluated by the reasonable standard of the law. Use of force is a given, but how that force is used, under what circumstances it is used, and how it is evaluated will be the determining factors.

Taking the time to explain, teach, and educate our community about police processes is as critical today as it ever has been in the history of our nation. Regardless of budgetary issues, time, money, and inconvenience, it is a necessity. The relationship between the community and the police demands a totally reciprocal proposition. Only through accurate and consistent communication will community trust, faith, and confidence be restored and maintained today and in the future.

### Conclusion

My purpose this evening has been to create community awareness. That is what I do in my classes with my students; learning is a lifelong process. I believe in informing and educating our people regarding policing with the hope of gaining insight, understanding, cooperation, and support from the community for those who serve and protect as police officers. Thank you for attending and participating in the City of Long Beach Citizen's Police Complaint Commission community workshop. ♦



# *Retiring from the “Thin Blue Line”*

## *A Need for Formal Preretirement Training (Part Two)*

By CARL B. CAUDILL, M.A. and  
KENNETH J. PEAK, Ph.D.

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**P**art one of this article highlighted several of the unique challenges that law enforcement officers encounter when they retire.<sup>1</sup> These include losing the strong bonds that have developed between officers who have shared the dangers, successes, and frustrations inherent in the work, along with the symbols of the position that identified them for so many years. In addition, many officers view retirement

as abandoning the “thin blue line.” Such factors contribute to the specific difficulties that officers face when they retire and point out the need for comprehensive preretirement training programs.

### **RETIREMENT PREPARATION**

Following extensive study of police retirements, one researcher concluded that officers face a multitude of problems

that they are not equipped to handle by themselves. He believed that the solution should come from law enforcement agencies and academia in the form of information and counseling programs that begin the day officers enter the police academy and extend to beyond the day they retire.<sup>2</sup> Other research also has indicated that such programs can provide psychological preparation for the event,<sup>3</sup> foster a supportive

retirement environment through decision-making assistance,<sup>4</sup> and benefit retired officers by having them counsel other officers nearing retirement.<sup>5</sup>

Given all of this, the authors argue that the need unequivocally exists for formal, in-house preretirement planning and training to alert, prepare, and assist officers in dealing with the issues that loom ahead. After a lifetime of service protecting others, this seems a small remuneration for officers who no longer report for duty. Certainly, numerous law enforcement retirees will welcome, and flourish during, this period of their lives; however, many also are ill-prepared and will suffer because of this.

In cases where retirement associations, human resources bureaus, or personnel divisions conduct meetings with retiring officers, they typically involve employees who hand out the necessary paperwork and answer questions on anticipated income, insurance and other benefits, and filling out the proper forms.<sup>6</sup> The authors do not suggest that such information lacks value; rather, they believe that research has clearly shown that law enforcement retirees should have a more comprehensive, planned preretirement process.

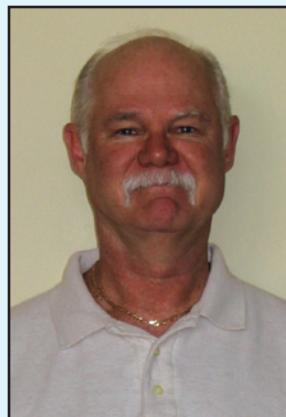
Moreover, the generation of baby-boomer officers, hired in

massive groups 25 to 30 years ago, are rapidly approaching retirement age.<sup>7</sup> This circumstance provides additional rationale for the introduction of preretirement programs into the training curriculums of all law enforcement organizations and, possibly, in recruit academies as well.

### Some Key Considerations

Before looking at the specific characteristics of a preretirement program, the authors offer several key aspects that law enforcement agencies should bear in mind. To begin with, they should take into account the longevity- and generation-related differences among officers. They need to approach any program with an understanding of the modern law enforcement officer, both rookie and veteran

alike. Officers are not just working in an era of new technology. Rather, they are the products of a newer *society*, wherein social changes have likely altered the traditional police image. Such training programs should incorporate information that pertains to the mind-set of today's officers. It would be folly to believe that officers with 20 years yet to work will think the same about financial, health, and life issues as those nearing retirement in 1 or 2 years. Therefore, the curriculum-planning process *must* account for, and be delivered from, where officers are situated in their careers. Consequently, the authors also recommend that agencies constantly revise and update the preretirement curriculum to account for the changing needs and problems confronting their officers.



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Furthermore, law enforcement organizations should work in concert with members of the academic community and other government agencies (e.g., human resources, benefits, and career education and counseling) in creating and establishing their programs. Within this collaborative arena, further study can determine whether the content is worthwhile and the longitudinal impact is beneficial, along with the likelihood of such training reducing the stressors posed by impending retirement.

### Possible Program Content

In addition to other topics individual agencies may deem worthwhile or necessary for inclusion in a formal preretirement training program, the authors recommend, at minimum, four primary areas to cover. First of all, departments must commit to the program. Then, they must recognize generational differences, develop a sound curriculum, and keep abreast of officer evolution.

#### *Administrative Commitment*

Because law enforcement leaders ultimately share responsibility for the health and well-being of their officers, they must demonstrate a commitment to the program. This can involve addressing the pitfalls of police retirement and providing the necessary resources

to promote the development, implementation, and establishment of preretirement training programs with other pertinent government organizations as a *policy*, not a short-lived project or program. In addition, leaders should ensure that personnel assigned the task of researching, organizing, developing, implementing, overseeing, and evaluating the program understand that a different approach will be necessary. Finally, they should encourage and promote the concept of preretirement training becoming part of the curriculum at the local police academy.

***After a lifetime of service protecting others, this seems a small remuneration for officers who no longer report for duty.***

on providing them with information on such topics as job placement and resume writing. Furthermore, agencies should understand that retirement training is not a “one size fits all” venture. Particularly when viewing retirement planning as a longitudinal, career-long undertaking, it also is important to remember that the different generations of officers have unique psychological and social traits; addressing these distinctive qualities will go a long way toward determining the ultimate success or failure of the retirement program. There is a substantial body of literature concerning differences among and between the various generations of workers who are either in or will soon enter today’s workplace. This information is not altogether flattering, but it is nonetheless valuable in understanding the nature and qualities of peace officers.

- Baby boomers (born between 1946 and 1964) are felt to constitute the last vestiges of one of the most significant-change generations ever to occur in American culture and compose the bulk of officers nearing or in the retirement phase of their careers. As a generation, they are commonly pessimistic concerning issues of finance, health, and their present and future quality of life, including their

#### *Generational Differences*

Law enforcement officers today are highly educated and intellectually cognizant of the world they live in; they are Internet savvy and know how to network and utilize all manner of online resources. For those reasons, preretirement programs no longer need to focus

## An Exemplar Program

In 1982, the Kansas City, Missouri, Police Department (KCPD) initiated its Preretirement Lecture Series program after determining that simple financial and benefits information proved insufficient in view of the physical and mental problems retiring officers experienced. An exploratory committee composed of representatives from various agencies surveyed current and past employees to pinpoint troublesome areas. The results were overwhelming: officers wanted broader assistance by the department. In response, KCPD offered a 20-hour preretirement lecture series to those officers with 23 or more years of service.

Officers attended the sessions while off duty and with their spouses. Topics covered involved gerontology issues, pension and benefit plans, physical and mental health, second-career analysis, economics management, legal affairs, and investment planning. The lecturers included specialists selected from local area universities, financial institutions, and representatives of the KCPD and city retirement board.

A pre- and postlecture questionnaire revealed that participants experienced an overall 20 percent increase in knowledge concerning retirement planning. Furthermore, 95 percent approved the materials taught, indicated that the program was long overdue, and recommended that it continue. KCPD has encouraged other law enforcement and criminal justice agencies to implement similar programs, not only to help their personnel prepare for retirement but also to demonstrate their concern about the employees' welfare before, during, and after they separate from the organization.

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*Source: Norman A. Caron and Robert T. Kelly, "The Kansas City Police Department Preretirement Planning Lecture Series," The Police Chief, January 1983, 47-49.*

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mortality. Baby boomers often wish to ignore retirement because society views it as one of the last steps in a person's life cycle. As a generational group, they require the most help in dealing with the retirement process because of their lack of preparedness, failure to acknowledge the inevitable, and outlook on life in general.<sup>8</sup>

- Generation X officers (born between 1964 and 1978) are in early to late midlife and not yet undergoing an in-depth contemplation of retirement. As a whole, they often are described as independent thinkers, self-absorbed, prone to wanting things now, and viewing the problems of the world as caused by the previous generation. They also are said

to be the forerunners of the "me" generation and founders of technological wonders that have set the standards for generations to come, and they know it. The drawback to Generation Xers is that they are not "savers" but "spenders," often to the degree that they carry excessive debt with little regard to their financial needs for the future. As a generational

group, the approach to their training lies in understanding their need for involvement. Researchers feel that these officers will work *with* their agencies on retirement training, not *for* them or as idle participants.<sup>9</sup>

- Generation Y (born between 1979 and 1995) includes officers in the youngest cohort, with only about half being old enough to even become police officers. Some authors have disparagingly described this group as being babied, pampered, and inundated with dozens of activities since childhood. Reared in a nonstop environment of multiple social activities, they are both high performance *and* potentially high maintenance. As laid-back personalities, they challenge the established way, question what they disagree with, and do not accommodate their occupation but expect it to accommodate them. Three words have been used to sum up this generational type of officer: *young, smart, and brash*. Although seemingly “free spirits,” Generation Y people, savvy when it comes to finances, understand that planning for the future is a high priority. After all, they are the era of the future: adept at multitasking,

comfortable with exploding technology, and certain of their own self-worth. As a generational group, training them to address potential retirement issues will not be difficult; instead, getting them to remain with the organization enough years to reach retirement age will prove the challenge.<sup>10</sup>

***...law enforcement organizations should work in concert with members of the academic community and other government agencies...in creating and establishing their programs.***

*Curriculum Development*  
The preretirement curriculum should have a base foundation of standardized training on financial considerations; benefit information; and the retirement process, including the dangers of harboring long-term stress. However, each generational category should have additional specific curriculum designed to reflect the age bracket involved. A few examples might involve—

- identifying those officer skills transferable to the private sector, discussing retirement expectations, and providing information on handling free time and coping with change for baby boomers;
  - enhancing opportunities for job promotion or special detail assignment, offering options for reentering the educational arena, encouraging their role as departmental mentors, and exploring possible retirement scenarios for Generation Xers; and
  - expanding career goals within the agency, exploring outside interests while participating in agency-sponsored community events, enhancing academic training and education, and discussing specifics of the relationship between life and job stressors for Generation Y officers.
- Law enforcement agencies could include preretirement training as part of their orientation sessions. This training should introduce newly hired officers to available resources, including not only how to set up a financial plan for retirement but also counseling for personal problems and the perils of ignoring retirement planning until the last possible point in time.

This would make preretirement training longitudinal in nature by spanning the entire career. Therefore, when retirement becomes a reality, officers will have prepared for the event and can separate from service in the most mentally and physically healthy fashion possible.

Preretirement program instructors should be professionals in the subject they are teaching. When possible, they should have a background in law enforcement but *not* be actively associated with the host agency. Departmental training personnel could oversee the training and act as organizers and facilitators but not as instructors.

Most agencies are required by state mandate (via Police Officer Standards and Training statutes) to have their officers complete advanced officer training on an annual basis and are responsible for the training content. A preretirement education course might be an ongoing component in such training. Hence, the program would serve as a transitional learning experience as officers pass from one generational module to the next and help them understand that their retirement is not just an event but, rather, a career-long process.

#### *Officer Evolution*

What happens when the lead generational group of baby

boomers is gone? How will the proposed conceptual method of using specific generational definitions remain applicable? The answers lie in understanding the concept of generational training.

First, following the passing of the lead group, the next generation moves to the forefront, and the following generation progresses to the midlife stage. The one assuming its place at the beginning of the process is determined by its age category as are all subsequent generations.



Future generational groups may have to be determined by age categories, rather than societal labels. Agencies must monitor the generational gaps closely because present-day divisions are drawing closer.

Finally, officers overseeing the preretirement training program cannot just keep up

with trends in law enforcement alone. They also must follow how *society* is being changed by technology and education and use futurists' projections to determine what the next generations will look like and the adjustments needed in response.

#### **CONCLUSION**

Law enforcement officers confront unique challenges with respect to their retirement. Therefore, the authors assert that this matter should be addressed through a formal, well-designed program during all stages of officers' careers. Such an approach can equip officers to transition smoothly into and flourish during their final tour of duty. ♦

#### **Endnotes**

<sup>1</sup> Carl B. Caudill and Kenneth J. Peak, "Retiring from the 'Thin Blue Line': A Need for Formal Preretirement Training," *FBI Law Enforcement Bulletin*, October 2009, 1-7.

<sup>2</sup> John M. Violanti, *Police Retirement: The Impact of Change* (Springfield, IL: Charles C. Thomas, 1992), 112. In this book, Violanti provided insights for developing a formal preretirement training program. He contended that officer retirement is a multifaceted life event involving change in psychological, physical, and stress-related health. Arguing for proactive strategies, he asserted that the necessity for preretirement planning should be a collective effort between the individual officer and the department. To that end, he provided a training model composed of six general objectives aimed at assisting an officer with the retirement process:

- 1) addressing reasons for mid-career

change; 2) understanding the negative consequences incurred in retirement; 3) acquiring information on the impact of the change; 4) cultivating job and education skills; 5) clarifying personal abilities, interests, and characteristics; and 6) finding help with job placement. Revisions to Violanti's model would be necessary to account for changes in law enforcement retirement; however, the book forms the basic foundation of retirement planning and remains applicable for contemporary law enforcement.

<sup>3</sup> Bill Rehm, "Retirement: A New Chapter, Not the End of the Story," *FBI Law Enforcement Bulletin*, September 1996, 6-11.

<sup>4</sup> Michael J. McCormick, "Resolving Retirement Issues for Police Officers," Criminal Justice Institute, University of Arkansas System, retrieved on December 10, 2008, from <http://www.cji.edu/papers/Resolving%20Retirement%20Issues%20for%20Police%20Officers.pdf>, 210.

<sup>5</sup> Nnamdi Pole, Madhur Kulkarni, Adam Bernstein, and Gary Kaufmann, "Resilience in Retired Police Officers," *Traumatology* 12, no. 3 (2006): 209.

<sup>6</sup> Jim Ruiz and Erin Morrow, "Retiring the Old Centurion: Life After a Career in Policing, An Exploratory Study," *International Journal of Public Administration* 28, no. 13/14 (2005): 1170.

<sup>7</sup> Beth Murtagh, "Police Departments Increase Recruiting Efforts," *The Daily Northwestern*, January 23, 2006, retrieved on March 16, 2009, from <http://media.www.dailynorthwestern.com/media/storage/paper853/news/2006/01/23/City/Police.Departments.Increase.Recruiting.Efforts-1920550.shtml>.

<sup>8</sup> D'Vera Cohn, "Baby Boomers: The Gloomiest Generation," Pew Research Center Publications, retrieved on December 10, 2008, from <http://pewresearch.org/pubs/880/baby-boomers-the-gloomiest-generation>; and Monica Hesse, "Baby Boomers Got the Blues," *Washington Post*,

July 10, 2008, retrieved on December 10, 2008, from <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/09/AR2008070902281.html>.

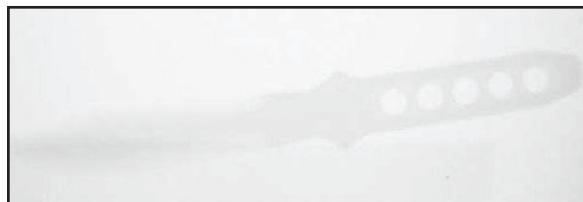
<sup>9</sup> Jennifer Alsever, "For Gen X, It's Time to Grow Up and Get a Broker," MSNBC Business and Finance, November 8, 2007, retrieved on December 10, 2008, from <http://www.msnbc.msn.com/id/21083120/>; and Diane Thielfoldt and Devon Scheef, "Generation X and the Millennials: What You Need to Know About Mentoring the New Generations," American Bar Association, August 2004, retrieved on December 10, 2008, from <http://www.abanet.org/lpm/lpt/articles/mgt08044.html>.

<sup>10</sup> Stephanie Armour, "Generation Y: They've Arrived at Work with a New Attitude," *USA Today*, November 8, 2005, retrieved on December 10, 2008, from [http://www.usatoday.com/money/workplace/2005-11-06-gen-y\\_x.htm](http://www.usatoday.com/money/workplace/2005-11-06-gen-y_x.htm).

## Unusual Weapon

### Plastic Throwing Knife

Offenders may attempt to use this plastic throwing knife. Magnetometers cannot detect it because of its composition, posing a serious threat to the safety of law enforcement officers.



## *Mental Disorder and Violent Victimization*

A recent study has found that when experiencing an increase in symptoms, individuals with major mental disorders are more likely to become victims of violent crimes than to commit such acts. In addition, people who are mentally ill become particularly vulnerable for victimization during times of homelessness and when suffering from alcohol abuse. The researcher analyzed data from the MacArthur Violence Risk Assessment—a longitudinal study of psychiatric patients released from three psychiatric hospitals in Pittsburgh, Pennsylvania; Kansas City, Missouri; and Worcester, Massachusetts—wherein participants were interviewed every 10 weeks for 1 year about violence committed against them, stress, symptoms, and social relationships.

When individuals with mental disorders experience increases in delusions, symptom severity, and alcohol problems, they may focus more on their internal states and have fewer cognitive resources available to devote to interactions with people. Other research has suggested that victimization happens because caretakers may be driven away, leaving those who have mental illness unprotected.

These findings are important for clinicians who must pay attention to warning signs of worsening disorders as potential risk markers for violent behavior committed by their clients. The information also could aid in the creation of assessment tools that focus on victimization risk and classes that better educate families about caring for relatives with mentally illness. Moreover, clinicians could provide their clients with suggestions for reducing victimization risk when they notice patients exhibiting greater than usual symptoms.

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Source: *Information presented is excerpted from Brent Teasdale, "Mental Disorder and Violent Victimization," Criminal Justice and Behavior 36, no. 5 (2009): 513-535, <http://cjb.sagepub.com/cgi/content/abstract/36/5/513>.*

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## *Domestic Violence Arrests*

The National Institute of Justice has released *Making Arrests in Domestic Violence Cases: What Police Should Know*. The document provides advice for law enforcement officers working with domestic violence cases who want to improve the effectiveness of arrests, conserve police resources, and raise conviction rates. Findings come from a study that examined dual arrest rates in domestic violence cases by combining data from the National Incident-Based Reporting System and a survey of police officers. The report (NCJ 225458) can be accessed at the National Criminal Justice Service's Web site, <http://www.ncjrs.gov>.

## Traits of Leadership

By Scott Jerabek and Danny Day, Jr.



Possibly, one of the most maligned individuals in any organization is the leader. Whether at the entry or senior-executive level, leaders receive the brunt of every complaint—not direct criticism but employee whispers around the “water cooler” implying poor leadership skills and a general discontent with them. Many people have their own perception of a “good” leader.

### Particular Characteristics

Classifying or defining a good leader resembles a U.S. Marine Corps rock drill. The Marine officer tells his troops to bring him a rock. When they arrive with the rock, the officer responds, “Not that rock.” When the troops inquire as to which rock, the officer responds, “Just bring me a rock; I’ll know it when I see it.” Often, individuals cannot articulate why they think someone is a good leader or what specific characteristics one possesses. For this article, the authors qualify a good leader as one who can effectively lead a group of individuals with a specific goal. The personality of the leader, coupled with an ability to accomplish the

mission, prove critical for success of the organization. Leaders also have personality characteristics that promote and develop others, such as overall awareness, empowerment of others, and personal integrity. The lack or overabundance of a leader’s characteristics can affect any organization. Leaders exhibit various styles of leadership that mature and change throughout their careers.

Unfortunately, many organizations have exchanged management for leadership. Effective management of resources or schedules does not constitute successful leadership. Although efficient leaders should possess management abilities, leadership consists of more than ensuring that the paperwork is complete or meeting certain financial results or production deadlines. While managing is synonymous with confirming that everyone has an assigned seat and is in it at the proper time doing the appropriate activity, leadership involves helping everyone see the bigger picture, such as why they need to sit in their assigned seats. Further, it includes informing not only those individuals being led about the purpose of the team, methods

used, and expected goals but also explaining to people inside and outside the organization.

Good leaders must maintain a critical awareness at all times. They realize that their words or actions have a ripple effect, regardless of who hears or observes, and that situations and problems do not exist in a sealed vacuum. For example, a leader's one, simple change to a situation most likely will shift the entire matter. Good leaders understand the complex system and willingly change their means and directives to reach the desired end state. If one could lead in a vacuum, military or law enforcement agencies could change leaders without worrying about the effects to the organizations.

Good leaders empower others. Ineffective ones may feel insecure in their abilities or position and not understand the need to invest in or mentor their subordinates. Interestingly, some leaders possess arrogance, opposite to the insecure leader, that can alienate them from their followers and prove more devastating than insecurity. Many times, ineffective leaders are unsettled by their subordinates and lead by intimidation. Instead of harnessing employees' positive qualities, ineffective leaders may micromanage personnel and demand that they follow plans in detail. On the other hand, good leaders will understand that they have strengths and weaknesses and will depend on others to overcome their shortcomings. Therefore, good leaders realize the importance of being a good follower. They do not always have to be in the spotlight—they are willing to allow others to grow and develop ideas and skills. Such an attitude leads to appropriate mentoring of followers, which cultivates and educates others to ultimately become effective leaders. Although selfless giving and empowering are foreign to individuals insecure with their abilities and position, they represent the hallmark of leaders whom individuals strive to emulate. In both law enforcement and the military, promotions should not be based solely on tenure but on

a person's ability to empower and mentor individuals. Until those factors become consistent in performance reviews, leaders will see them as beneficial, rather than required. Leaders must recognize that personal success and the overall well-being of an organization come from proper mentoring and empowerment.

Integrity, the final characteristic of good leadership, involves more than simply being honest.

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It embodies a sense of confidence, ownership, and oneness. Good leaders have confidence in both their abilities and those of their subordinates. If they feel insecure about employees, they invest the time to mentor them. Although good leaders may question aspects of a plan or offer their own ideas, once they establish a course of action, they have the confidence to move forward and allow subordinates to complete their mission without overbearing them.

Good leaders take ownership of a situation. They truly care about the people and all circumstances even though their tenure might be short. They are not “punching a card” to move up the ladder. In addition, they have a sense of oneness and realize that individuals within the organization are all on the same team. It is not an “us versus them” or “leader versus worker” mentality. Effective leaders engage in dialogue and discuss impending concerns. They foster independent thinking and do not expect subordinates to blindly obey all decrees.

### **Subsequent Considerations**

Discussions of leadership in a law enforcement or military organization often neglect to address factors concerning the constant rotation of leaders. These forced transitions frequently cause disruption. Therefore, they require due diligence before, during, and after the changes, which may cause confusion among the ranks. All leaders in the organization must remain cognizant of such impacts.

Moreover, many people view law enforcement and military leaders as having the power to command subordinates to unquestionably follow all orders. To achieve real success, true leaders receive input from every source, including their

followers, prior to issuing orders. Members of a team receiving potentially hazardous commands must understand the leaders’ intent, desire, and design. This does not imply that decisions are available for discussion but that understanding is critical to success, especially when lack of understanding or buy in could result in the loss of an innocent life.

### **Conclusion**

Although difficult to articulate what makes leaders good, some general characteristics seem universal. They understand that situations will change and that they must remain flexible. Good leaders must have the ability to empower everyone in their organization and to always treat others as they want to be treated. They are selfless and develop subordinates’ traits of leadership. Finally, good leaders have solid integrity to trust in their abilities, as well as those of their employees, to take ownership of a situation or problem regardless of how small, and to foster a team attitude. People can quickly point out when they have worked for a good leader. It becomes apparent what comprises good leaders in organizations where they change frequently because the entire command structure feels the implications when they leave. As a successful veteran of many leadership situations, a U.S. special operations command general stated, “The whole organization stands a little taller and breathes a sigh of relief as the guidon is passed from a poor leader to a good leader!” Followers and those outside a leader’s purview observe actions, thoughts, words, and facial expressions. Leaders must remain cognizant of even their smallest gestures because their integrity is as delicate as their leadership position. ♦

**Good leaders have confidence in both their abilities and those of their subordinates.**

# Pole Cameras and Surreptitious Surveillance

By M. WESLEY CLARK, J.D., LL.M.



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**S**uppose during the course of an investigation, officers develop information that indicates that their subject is growing marijuana on his property and has erected a 10-foot-high opaque fence around his house and an adjacent area. Officers suspect that the illicit crop is being grown on the fenced-in land, but they have no aviation assets with which to conduct an overflight to either confirm or deny this information. What can they do?

An effective law enforcement technique, especially in

circumstances where suspects engage in countersurveillance or where physical surveillance by law enforcement personnel is operationally impractical, is to affix a video camera to a utility pole. The camera view is nothing more than a utility worker would have if he was performing maintenance or other job-related duties atop the pole. In many instances, this has been accomplished with the consent of the utility company and, thus, without either an installation order or one authorizing monitoring. This article explores the

use of this investigative technique within the parameters of the Fourth Amendment.

## FOURTH AMENDMENT ISSUE

The federal statutes governing the interception of wire, oral, and electronic communications<sup>1</sup> do not address the installation and monitoring of video-only (also referred to as silent or nonaudio video) camera surveillance. Instead, this technique is governed by a non-statutory Fourth Amendment analysis.<sup>2</sup> The first part of



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**“Any use of video surveillance...should be scrutinized to determine whether privacy interests are implicated and a search warrant is required....”**

this analysis focuses on whether the government is interfering with a person's expectation of privacy. This determination is made by assessing whether the person challenging the legality of the video-only surveillance "manifest[s] a subjective expectation of privacy" with respect to the subject of the surveillance and, second, if society is "willing to recognize that expectation as reasonable."<sup>3</sup> If an expectation of privacy is found to exist, the Fourth Amendment then requires law enforcement to be reasonable in its actions, which generally requires a warrant unless an exception to the warrant requirement applies.

As a general rule,<sup>4</sup> observations of a person's comings and goings by law enforcement that are neither inside a dwelling nor within a curtilage do not constitute either a Fourth Amendment search or seizure.

Curtilage is "the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life.'"<sup>5</sup> For Fourth Amendment purposes, the curtilage is considered sufficiently intimate that it is treated and protected as if it were part of a person's residence.<sup>6</sup> Even though there are no privacy interests implicated that society would be prepared to recognize as reasonable with regard to many areas that are neither inside the home nor within a curtilage and even though a warrant would not be required, liability concerns have led some utilities to request a court order from law enforcement before permitting the installation and operation of cameras on company poles.<sup>7</sup>

#### FEDERAL CASE LAW

Currently, there is a divergence in federal case law

concerning whether a search warrant is required to conduct pole-camera surveillance in the vicinity of a residence. In *United States v. Jackson*,<sup>8</sup> the Tenth Circuit determined that no warrant was necessary whereas in *United States v. Cuevas-Sanchez*,<sup>9</sup> the Fifth Circuit reached a contrary result.

#### ***United States v. Jackson: Operation of Pole Camera Without a Warrant***

The FBI in *Jackson*, working with the Elk City, Oklahoma, police set up video cameras on the tops of telephone poles to surveil what was taking place on the residential properties of two people suspected of belonging to a crack distribution ring. "Although both of these cameras could be adjusted by officers at the police station, and could zoom in close enough to read a license plate, neither had the capacity to record sound, and neither could view the inside of the houses."<sup>10</sup> The court found that the two defendants had no reasonable expectation of privacy necessitating a search warrant because the cameras "were incapable of viewing inside the houses, and were capable of observing only what any passerby would easily have been able to observe."<sup>11</sup>

The Tenth Circuit determined that the court decisions relied upon by the defendants, *United States v. Mesa-Rincon*<sup>12</sup>

(an earlier Tenth Circuit decision involving a video camera placed inside a business) and *United States v. Torres*<sup>13</sup> (video cameras inside a residence used as a “safe house” where bombs were being made), were not applicable because reasonable expectations of privacy were implicated in each. In support of its ruling ultimately in the government’s favor, the *Jackson* court referred to *California v. Ciralo*,<sup>14</sup> which—in the eyes of the Tenth Circuit—stood for the proposition that “aerial observation of a fenced-in backyard within the *curtilage* of a home without a warrant, does not violate the Fourth Amendment[.]”<sup>15</sup>

#### ***California v. Ciralo: Overflight of Curtilage Without a Warrant***

The defendant in *Ciralo* had been growing marijuana in his backyard that was surrounded by both a 6-foot inner fence and a 10-foot inner fence; the fences precluded anyone at ground level from observing Ciralo’s illicit activities. Police used a private aircraft in publicly navigable airspace (1,000 feet) to overfly—without a warrant—the defendant’s property both to confirm their suspicions and to corroborate an anonymous tip. In determining whether Ciralo had a constitutionally protected reasonable expectation of privacy, the Supreme Court readily conceded that Ciralo met the

first prong of the court’s two-part test:<sup>16</sup> that he well manifested “his own subjective intent and desire to maintain privacy as to his unlawful agricultural pursuits.”<sup>17</sup> However, that subjective expectation was not one that society would be willing to recognize as reasonable. “Yet a 10-foot fence might not shield these (marijuana) plants from the eyes of a

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been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares. Nor does the mere fact that an individual has taken measures to restrict some views of his activities preclude an officer’s observations from a public vantage point *where he has a right to be* and which renders the activities clearly visible. “What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.”<sup>19</sup>

The Supreme Court stated that “[a]ny member of the public flying in this airspace who glanced down could have seen everything that these officers observed.”<sup>20</sup> Importantly for pole-camera considerations, the court added that “one who grows illicit drugs in his backyard is [not] ‘entitled to assume’ his unlawful conduct will not be observed by a passing aircraft—or by a power company repair mechanic on a pole overlooking the yard.”<sup>21</sup>

The combined lesson possibly drawn from both *Jackson* and *Ciralo* is that if law enforcement personnel could observe a suspect’s property (including a deliberately shielded curtilage) from a location where they have a right to be, then no Fourth Amendment

citizen or a policeman perched on the top of a truck or a two-level bus.”<sup>18</sup>

Ciralo argued that because his marijuana crop was growing inside the curtilage of his home, police should have obtained a search warrant before conducting the overflight. The Supreme Court disagreed, stating

That the area is within the curtilage does not itself bar all police observation. The Fourth Amendment protection of the home has never

privacy interest is affronted. Because utility company employees could quite properly be atop a utility pole on adjacent property in the normal course of their duties, so, too, could a law enforcement officer and, by implication, the pole camera. Law enforcement personnel can make warrantless observations of a suspect's residential property—even if opaquely fenced—from the top of a passing truck or double-decker bus. Assuming a tree were adjacent to a suspect's property shielded by an opaque fence, the tree could presumably be climbed by neighborhood children at play, and if the children are not precluded or otherwise prevented from such activity, neither would law enforcement personnel, assuming that they have legal authority to occupy the tree. A utility pole (or even a multistory adjacent building) would be analogous to the tree, and the use of the video camera affixed to the pole could metaphorically stand in for the climbers.

#### ***United States v. Cuevas-Sanchez: Installation of Pole Camera with Warrant***

In *United States v. Cuevas-Sanchez*,<sup>22</sup> authorities suspected that the defendant's property was being used by drug traffickers as a drop house. Federal law enforcement officers sought and received a court

order permitting the installation and monitoring of a video camera affixed to a power pole that would enable them to peer over a 10-foot-high fence at the back of his yard within the curtilage.<sup>23</sup> The order relied upon an "extensive affidavit," and the application upon which the order was based "explained that conventional law enforcement techniques, although attempted,

***...some utilities... request a court order from law enforcement before permitting the installation and operation of cameras on company poles.***

had failed to uncover enough evidence to convict the drug traffickers."<sup>24</sup> The order limited the initial period of surveillance to 30 days, mandated minimization, and directed law enforcement to "discontinue the surveillance when none of the suspected participants were on the premises."<sup>25</sup>

Responding to the defendant's arguments seeking suppression of incriminating video evidence, the government contended first that it had not needed an authorization order

because the defendant had no Fourth Amendment reasonable expectation of privacy with respect to the activities taking place in his yard. Relying on *Ciralo*, the government urged that this was so because a "power company lineman on the top of the pole or a policeman on top of a truck could peer over the 10-foot rear fence."<sup>26</sup> The Fifth Circuit dismissed the government's argument, noting first that Cuevas-Sanchez had certainly exhibited a *subjective* expectation of privacy by erecting the fence that "screen[ed] the activity from casual observers."<sup>27</sup> Additionally, the area the camera surveilled, said the court, constituted "the curtilage of his home, an area protected by traditional Fourth Amendment analysis."<sup>28</sup> The Fifth Circuit observed that pole-camera surveillance "provokes an immediate negative visceral reaction: indiscriminate video surveillance raises the spectre of an Orwellian state."<sup>29</sup>

The government's reliance upon *Ciralo*, said the three-judge panel, was misplaced because in this instance

...the government's intrusion is not minimal. It is not a one-time overhead flight or a glance over the fence by a passerby. Here the government placed a video camera that allowed them to record all activity in Cuevas's backyard. It does not

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follow that *Ciralo* authorizes any type of surveillance whatever just because one type of minimally intrusive aerial observation is possible.<sup>30</sup>

In short, said the appellate court, “Cuevas’s expectation to be free from this type of video surveillance in his backyard is one that society is willing to recognize as reasonable.”<sup>31</sup> Borrowing from the Second and Seventh Circuits,<sup>32</sup> the court announced that the following requirements—taken from the federal statute governing electronic surveillance<sup>33</sup> (often referred to as Title III)—were prerequisites for a video surveillance court order in circumstances where a reasonable expectation of privacy is implicated:

(1) the judge issuing the warrant must find that “normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous,” 18 U.S.C. § 2518(3)(c); (2) the warrant must contain “a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates,” *id.* § 2518(4)(c); (3) the warrant must not allow the period of interception to be “longer than is necessary to achieve

the objective of the authorization,... or in any event longer than thirty days” (though extensions are possible), *id.* § 2518(5); and (4) the warrant must require that the interception “be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under [Title III],” *id.*<sup>34</sup>



Because in this case the government followed all of the requirements just recited, the defendant’s attempt to have the video surveillance excluded was unsuccessful.

### ***Florida v. Riley: Warrantless Overflight Revisited***

A year and a half after *Cuevas-Sanchez*, the U.S. Supreme Court had occasion to again consider the aerial surveillance of a suspect’s curtilage by law enforcement in *Florida v. Riley*.<sup>35</sup> The overflight here was more intrusive than it had been in *Ciralo*—the instant

case involved two helicopter flybys at 400 feet (which was within navigable airspace for rotary-wing aircraft). Riley owned 5 acres of rural property, and both a mobile home and a greenhouse, some 10 to 20 feet in back of that home, were situated on that land. Riley’s marijuana was inside the greenhouse, which, unfortunately for him, was only partially roofed and sided. An officer in the helicopter was able to see Riley’s crop with the naked eye and, based in part upon that observation, secured a search warrant that was successfully executed. Riley claimed that the aerial surveillance constituted a Fourth Amendment violation. The Supreme Court disagreed.

Relying on *Ciralo*, the Supreme Court upheld the search, noting that “no intimate details connected with the use of the home or curtilage were observed[.]”<sup>36</sup> The court continued that *Ciralo* stood, in part, for the proposition that “the home and its curtilage are not necessarily protected from inspection that involves no physical invasion.”<sup>37</sup> The court added, “‘What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.’ As a general proposition, the police may see what may be seen ‘from a public vantage point where [they have] a right to

be.”<sup>38</sup> The court reasoned that because any member of the public could legally have taken a helicopter ride 400 feet above Riley’s property and witnessed the defendant’s illegal horticultural display, so, too, could the police.

## ADDITIONAL FEDERAL CASE LAW

In *United States v. Urbina*,<sup>39</sup> law enforcement installed a camera and video transmitter on a telephone pole away from the property of one of the defendants. The equipment was positioned so that it monitored the front of the defendant’s residence and could surveil the home’s driveway to identify vehicles coming and going. The U.S. magistrate judge found the facts in *Urbina* to be distinguishable from *Cuevas-Sanchez*: “The agents in the present case were not surveilling anything that was not otherwise visible using traditional street-level surveillance techniques.”<sup>40</sup> Although the court was mindful of the “Orwellian spectre” of 24/7 video surveillance, Fourth Amendment concerns were not manifest here because the defendant “had no reasonable expectation of privacy in the end of his driveway[.]”<sup>41</sup> a conclusion the Seventh Circuit had reached in a prior decision.<sup>42</sup> The court equated the video surveillance at issue here with everyday

observations by police: “If the investigative agents had chosen to utilize traditional surveillance methods and parked across the street and simply monitored the persons coming and going from the defendant’s residence, it is unlikely that such actions would have inspired a motion to suppress; such actions are clearly constitutional.”<sup>43</sup>

Seemingly attuned to the Fifth Circuit’s reasoning in *Cuevas-Sanchez*, the U.S. magistrate judge here sounded a cautionary note, explaining that

***Currently, there is a divergence in federal case law concerning whether a search warrant is required to conduct pole-camera surveillance in the vicinity of a residence.***

traditional “eyeball” observations by police are distinct from the omnipresence of a covert surveillance camera. The court observed, “[I]t is unarguable that television surveillance is exceedingly intrusive...and inherently indiscriminate, and that it could be grossly abused—to eliminate personal privacy as understood in modern Western

nations.”<sup>44</sup> It is unclear, however, in what manner covert video surveillance would be any more intrusive than round-the-clock physical surveillance conducted by binocular-equipped law enforcement personnel located in a concealed observation post.

In any event, a federal district court judge later upheld the ruling in *Urbina*, stating that no search occurred where police used a pole camera, not located on the defendant’s property, to surveil traffic in and out of his driveway.<sup>45</sup> The court here also took pains to differentiate the facts before it from those present in *Cuevas-Sanchez*:

“This is not a case, like *United States v. Cuevas-Sanchez*, where agents used a camera to observe activity that would otherwise be obscured by a fence.”<sup>46</sup> However, the district court also cited *Jackson*<sup>47</sup> but did so for the limited proposition that “substitution of a camera for in-person surveillance does not offend the Fourth Amendment...[where] the camera did not record activities within defendant’s home or its curtilage obscured from public view.”<sup>48</sup>

## STATE CASE LAW

In *State v. Holden*,<sup>49</sup> The Utah Court of Appeals was confronted with a set of facts similar to those in *Urbina*. Because of the number of people frequenting the defendant’s house, a neighbor sus-

pected that he was selling drugs, complained to the police, and consented to the installation of a video camera on his property aimed at the defendant's front yard. In denying Holden's suppression motion, the trial court concluded that the video camera "recorded nothing different than would have been seen had an officer been at the same location for the entire time."<sup>50</sup> Holden continued to press the argument on appeal that a search warrant should have been obtained because he had a reasonable expectation of privacy inasmuch as, if he had known he was being "watched" around-the-clock from across the street, he would have been "offended." The appellate court affirmed the denial of the defendant's suppression motion, noting "that objects falling within the plain view of an officer from a position where he is entitled to be are not the subject of an unlawful search.... For an officer to look at what is in open view from a position lawfully accessible to the public cannot constitute an invasion of a reasonable expectation of privacy."<sup>51</sup>

Holden's reliance upon *Cuevas-Sanchez* was misplaced, said the court, because in the Fifth Circuit case, the defendant had installed fences screening his property from onlookers, something Holden had not done. The court observed that this was not a case where the police "se-

cretly place[d] a camera directly over Holden's yard to observe his movements."<sup>52</sup> Here, although Holden could not have spotted the concealed camera aimed his way, anyone invited to the neighbor's house could have seen the cars arriving at Holden's residence at the rate of more than 52 vehicles over a 52-hour period. The view of such hypothetical invitees "was presumably not much different

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from what would have been the view of someone walking along the street or driving a car past the house."<sup>53</sup>

The Supreme Court of Vermont had occasion to review the warrantless installation and use of a motion-activated video camera that police focused on the defendant's marijuana plants and a portion of the path from the house leading to the plants in *State v. Costin*.<sup>54</sup> The defendant conceded that his crop, located on his unposted property and about 150 feet from the

house, was outside the curtilage, and although he admitted there was no Fourth Amendment issue, Costin contended that he was afforded greater protection under the state constitution. The court held otherwise, commenting that Costin had no reasonable expectation of privacy with respect to that portion of his property under video observation because "in the area in which he tended his marijuana garden[,]... he took no steps to exclude the public."<sup>55</sup> Upholding the use of the video evidence, the court concluded that the camera the police had installed was merely "a substitute for in-person surveillance[:]"<sup>56</sup>

Thus, it [the video camera] is a substitute for the traditional stake-out where a law enforcement officer conceals himself and waits to make the same observation as the video camera would make.... [T]he camera, if anything, was less intrusive on the privacy of the landowner because it had a narrow viewing field, was employed only when someone approached the marijuana garden and did not even record sounds. We do not see how [the Vermont constitution] protects against the use of a technological device that accomplishes the same result as a lawful in-person stake-out, and nothing more.<sup>57</sup>

## CONCLUSION

The use of video surveillance by the government to capture the activities of individuals is a sensitive issue. Applying constitutional principles, as long as the video surveillance is of a public area, there are no Fourth Amendment concerns. Once investigators wish to focus on the activities occurring adjacent to homes, particularly where the occupants have undertaken efforts to block access and perhaps view, coordination with prosecutors is advisable to determine the ramifications of decisions, such as *Cuevas-Sanchez* or *Jackson*. This is especially so for police officers because state constitutions may afford greater protection than the Fourth Amendment.

In *Jackson*, the warrantless installation and use of pole cameras were permitted because the devices, even though they had zoom capability, could not peer inside houses and only permitted law enforcement to see “what any passerby would easily have been able to observe” even if the area was part of the curtilage. It is unclear how the *Jackson* court would rule if faced with warrantless video surveillance of a deliberately shielded curtilage area, although given the panel’s reliance on *Ciralo*, it would seem that the Tenth Circuit would uphold such observations.

In *Cuevas-Sanchez*, the Fifth Circuit ruled that video surveillance of a curtilage that is deliberately protected from observation by ordinary passersby would require a warrant. The court would not be swayed by the logic of *Ciralo* and its progeny because such cases involved one-time or relatively brief overflights, an incursion the court characterized as “minimal,” as opposed to more intrusive constant video surveillance.

Of course, video surveillance even of public places may implicate the First Amendment depending on what the surveillance is targeting. For example,



the First Amendment may be implicated if the surveillance is targeting individuals engaged in protest activity or other forms of protected speech or on religious establishments. Any use of video surveillance by law

enforcement should be scrutinized to determine whether privacy interests are implicated and a search warrant is required or advisable and whether the First Amendment is implicated. Furthermore, if a search warrant is required, investigators must be aware of additional judicially imposed components to this court order, similar to those needed for electronic surveillance, required in some jurisdictions for video surveillance. ♦

### Endnotes

<sup>1</sup> Title III of the *Omnibus Crime Control and Safe Streets Act of 1968*, Pub. L. No. 90-351, tit. III, 82 Stat. 197, 211 (1968) (codified as amended at 18 U.S.C. §§ 2510-2522) and the Foreign Intelligence Surveillance Act at 50 U.S.C. § 1801 *et seq.*

<sup>2</sup> See, e.g., *United States v. Falls*, 34 F.3d 674 (8th Cir. 1994) (apartment interior); *United States v. Koyomejian*, 970 F.2d 536 (9th Cir. 1992) (*en banc*) (business office interior); *United States v. Mesa-Rincon*, 911 F.2d 1433 (10th Cir. 1990) (warehouse-like building interior); *United States v. Cuevas-Sanchez*, 821 F.2d 248 (5th Cir. 1987) (back yard); *United States v. Biasucci*, 786 F.2d 504 (2d Cir. 1986) (private business office); *United States v. Torres*, 751 F.2d 875 (7th Cir. 1984) (apartment used as safe house to manufacture bombs); *Cf. United States v. Williams*, 124 F.3d 411 (3rd Cir. 1997) (office interior).

<sup>3</sup> *California v. Ciralo*, 476 U.S. 207, 211 (1986) (citation omitted).

<sup>4</sup> Note, however, that Fourth Amendment protections can and do reach commercial establishments. “Plainly a business establishment or an industrial or commercial facility enjoys certain protections under the Fourth Amendment.” *Dow Chemical v. United States*, 476 U.S. 227, 235 (1986) (citations omitted).

<sup>5</sup> JAMES CISSEL, FEDERAL CRIMINAL TRIALS, 6th ED. § 2-5(e)(2) *citing Boyd v. United States*, 116 U.S. 616, 630 (1886). A garage attached to a residence would probably be considered as part of the home's curtilage.

<sup>6</sup> To determine if surrounding property is "sufficiently intimate," the courts analyze four factors identified by the Supreme Court: (1) the closeness of the area in question to the home; (2) whether this area is within an enclosure surrounding the dwelling; (3) the manner in which the area is used; and (4) the "steps taken by the resident to protect the areas from observation" by passers-by. No one factor is determinative, and not all four have to be present before a person is able to conclude that an area under consideration is to be considered curtilage. *United States v. Dunn*, 480 U.S. 294, 301 (1987).

<sup>7</sup> One approach that has met some success is to ground such an order upon FED. R. CRIM. P. 57(b) and the *All Writs Act*, 28 U.S.C. § 1651, *see United States v. Turner*, Nos. CRIM. A. 95-296-03 & CIV. A. 98-CV-5097, 1999 WL 88937 (E.D. Pa. Feb. 22, 1999); *United States v. Bullock*, Nos. CRIM. A. 95-296-02 & CIV. A. 98-CV-5023, 1999 WL 81526 (E.D. Pa. Feb. 8, 1999); *United States v. Bullock*, Nos. CRIM. A. 95-296-01 & CIV.A. 98-CV-5072, 1998 WL 826983 (E.D. Pa. Nov. 25 1998).

<sup>8</sup> 213 F.3d 1269 (10th Cir.), vacated on other grounds, 531 U.S. 1033 (2000).

<sup>9</sup> 821 F.2d 248 (5th Cir. 1987) (Note that although *Cuevas-Sanchez* was written 13 years before *Jackson*, the later case never mentioned the one decided earlier).

<sup>10</sup> *Jackson*, 213 F.3d at 1276.

<sup>11</sup> *Id.* at 1281.

<sup>12</sup> 911 F.2d 1433 (10th Cir. 1990).

<sup>13</sup> 751 F.2d 875 (7th Cir. 1984).

<sup>14</sup> 476 U.S. 207 (1986). For another case involving aerial surveillance, see *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986) (surveillance with precision aerial-mapping camera from navigable airspace of industrial complex not a search) ("[O]pen areas of an industrial plant...

are not analogous to the 'curtilage' of a dwelling for purposes of aerial surveillance[.]" *Id.* at 239.)

<sup>15</sup> *Jackson*, 213 F.3d at 1280-8 (emphasis added).

<sup>16</sup> "[F]irst, has the individual manifested a subjective expectation of privacy in the object of the challenged search? Second, is society willing to recognize that expectation as reasonable?" *Ciralo*, 476 U.S. at 211 (citing *Smith v. Maryland*, 442 U.S. 735 (1979)). *See also supra* note 3 and accompanying text.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

**“...video surveillance even of public places may implicate the First Amendment depending on what the surveillance is targeting.”**

<sup>24</sup> *Id.* at 249. *Cf.* 18 U.S.C. § 2518(3)(c).

<sup>25</sup> *Id.* at 249-50. *Cf.* 18 U.S.C. § 2518(5).

<sup>26</sup> *Id.* at 250.

<sup>27</sup> *Id.* at 251.

<sup>28</sup> *Id.* *But cf.* *United States v. McIver*, 186 F.3d 1119 (9th Cir. 1999) (driveway located in defendant's unfenced front yard conceded not to be curtilage). *McIver* also upheld motion-activated video surveillance, what the court referred to as a "mechanical eye," of a marijuana patch located on public land in a national forest. "It is beyond dispute that the Forest Service could have stationed officers to conduct a 24-hour surveillance of the marijuana garden." *Id.* at 1125 (citation omitted).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Biasucci and Torres, supra* note 2.

<sup>33</sup> 18 U.S.C. § 2510 *et seq.*

<sup>34</sup> *Cuevas-Sanchez*, 821 F.2d at 252, quoting *Biasucci*, 786 F.2d at 510. Note that unless the subjects of the video-only surveillance converse using sign language or the video watchers are adept at reading lips, presumably no communications could be intercepted. Note, too, that with the exception of *Cuevas-Sanchez*, all of the U.S. Courts of Appeal which have adopted these four Title III tests, *supra* note 2, involved the video surveillance of building interiors. Before federal officials may seek a warrant permitting video-only surveillance when a reasonable expectation of privacy exists, approval must be obtained from the Justice Department, *see U.S. Attorneys' Manual 9-7.200 available at http://www.usdoj.gov/usao/eousa/foia\_reading\_room/usam/title9/7mcrm.htm#9-7.200* (accessed April 28, 2009).

<sup>35</sup> 488 U.S. 445 (1989) (plurality opinion).

<sup>36</sup> *Id.* at 452.

<sup>37</sup> *Id.* at 449.

<sup>38</sup> *Id.* (internal citations omitted).

<sup>39</sup> No. 06-CR-336, 2007 WL 4895782 (E.D.Wis. Nov. 6, 2007) (unpublished).

<sup>40</sup> *Id.* at \*7.

<sup>41</sup> *Id.*

<sup>42</sup> "The Seventh Circuit has explicitly held that an individual does not have a reasonable expectation of privacy in his driveway absent evidence that the public access was somehow limited." *Id.* at \*6 (citing *United States v. Evans*, 27 F.3d 1219, 1229 (7th Cir. 1994). *Cf. McIver, supra* note 27).

<sup>43</sup> *Id.* Such conspicuous surveillance—which would certainly alert wrongdoers—would be unlikely to uncover any useful criminal intelligence.

<sup>44</sup> *Id.* (quoting *Torres, supra* note 2, at 882).

<sup>45</sup> *United States v. Aguilera*, No. 06-CR-336, 2008 WL 375210 (E.D. Wis. Feb. 11,

2008) (Aguilera was one of the defendants in *Urbina*).

<sup>46</sup> *Id.* at \*2, n.3.

<sup>47</sup> *Supra* note 8.

<sup>48</sup> *Aguilera*, 2008 WL 375210 at \*2. It is not immediately clear from the facts in *Jackson* where and how the pole camera was aimed and what it was able to "see." Although relying in part on *Ciralo*, (*supra* note 3), the *Jackson* court did say, however, that the camera was "capable of observing only what any passerby would easily have been able to observe." *Jackson*, 213 F.3d at 1281.

<sup>49</sup> 964 P.2d 318 (Utah Ct.App.1998). *Cf. Hudspeth v. State*, 78 S.W.3d 99 (Ark.2002).

<sup>50</sup> *Holden*, 964 P.2d at 321.

<sup>51</sup> *Id.* (citation omitted).

<sup>52</sup> *Id.* at 322.

<sup>53</sup> *Id.*

<sup>54</sup> 720 A.2d 866 (Vt. 1998).

<sup>55</sup> *Id.* at 869.

<sup>56</sup> *Id.* at 870. "The video camera recorded only what an officer standing in the same position would have observed with the naked eye." *Id.* (citation omitted).

<sup>57</sup> *Id.*

*Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.*

## We Need Your E-mail Addresses

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Editor  
*FBI Law Enforcement Bulletin*

# The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



Corporal Menesini

Corporal Mark Menesini of the Benicia, California, Police Department responded to a traffic collision in which a vehicle veered off a highway and came to rest in a residential swimming pool. The first emergency responder to arrive, Corporal Menesini found the vehicle mostly submerged with a female trapped inside. The woman was completely underwater and appeared deceased. Immediately, Corporal Menesini entered the frigid water and worked frantically to free the lifeless victim. At this time, the fire department arrived and helped Corporal Menesini to remove the woman and carry her to the side of the pool where paramedics revived her. The victim regained consciousness before being transported to a local hospital.



Deputy Wall

The Scott County, Iowa, Sheriff's Office received a report of smoke in an apartment building. Deputy Josh Wall was first on the scene. Despite heavy smoke coming from inside, he entered and climbed the stairs where he made contact with the occupant of an upstairs apartment who was unaware of the danger. Deputy Wall then tried to locate additional victims in a lower-level apartment but could not get a response. Deputy Wall tried to force open the door but was unsuccessful. He then went to the rear of the structure and yelled inside but still did not make contact. Then, he went to the front of the building and knocked on the bedroom windows with his baton; finally, the occupant, who was asleep, awakened. Deputy Wall reentered the structure, met the victim at his door, and helped him through the heavy smoke to safety.

## Wanted: Bulletin Notes

The *FBI Law Enforcement Bulletin* seeks nominations for the **Bulletin Notes**. Nominations should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Outreach and Communication Unit, Quantico, VA 22135.

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## ***Patch Call***



Tega Cay, South Carolina, is a residential-recreational community with 18 miles of shoreline located just south of Charlotte, North Carolina. The patch of its police department features the city logo: sails on the water with a pine tree and the sun in the background.



The patch of the Wyoming, Michigan, Police Department shows a bald eagle perched on the hilt of a sword, the scales of justice, and crossed American flags. The sword represents responsibility to the community, and the eagle, flags, and scales symbolize equal protection and justice for all. The two stars at the top signify professionalism.